

ORIGINAL

Marjorie Sommer Cooke (State Bar No.
161694)
mcooke@ccg-law.com
COOKE CLANCY & GRUENTHAL LLP
265 Franklin Street
Boston, MA 02110
Telephone: (617) 428-6800
Facsimile: (617) 428-6868

Attorneys for defendant INVESTORS BANK
& TRUST COMPANY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

2007 MAY -3 PM 2:55
CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

FILED

INNOFONE.COM, INC.,

Plaintiff,

v.

COGENT CAPITAL FINANCIAL
LLC, COGENT CAPITAL
INVESTMENTS LLC, GREGORY L.
KOFFORD, MARK W. HOLDEN and
INVESTORS BANK & TRUST
COMPANY,

Defendants.

Case No. CV-07-1793 DDP
(MANx)

ANSWER OF DEFENDANT
INVESTORS BANK & TRUST
COMPANY

Defendant Investors Bank & Trust Company ("IBT") answers each numbered paragraph of the Complaint of Innofone.com, Inc. ("Innofone") as follows:

JURISDICTION – CIV. L.R. 8-1 STATEMENT

1. No answer is required to paragraph 1, which purports solely to state conclusions of law.

2. No answer is required to the first sentence of paragraph 2, which purports solely to state conclusions of law. IBT admits that it is a Massachusetts trust company with a principal place of business in Boston, Massachusetts. IBT

DOCKETED ON CM

MAY - 9 2007

BY

007

1 lacks knowledge or information sufficient to form a belief as to the truth of the
2 remaining allegations of paragraph 2.

3 **NATURE OF THE ACTION**

4 3. No answer is required to the first sentence of paragraph 3, which
5 purports merely to characterize the plaintiff's allegations. IBT admits that the
6 parties to this action deposited certain stocks and bonds in escrow and entered into
7 an equity swap transaction. IBT lacks knowledge or information sufficient to form
8 a belief as to the truth of the remaining allegations of paragraph 3.

9 4. IBT lacks knowledge or information sufficient to form a belief as to
10 the truth of the allegations of paragraph 4.

11 5. IBT lacks knowledge or information sufficient to form a belief as to
12 the truth of the allegations of paragraph 5.

13 6. IBT lacks knowledge or information sufficient to form a belief as to
14 the truth of the allegations of paragraph 6.

15 7. IBT lacks knowledge or information sufficient to form a belief as to
16 the truth of the allegations of paragraph 7.

17 **THE PARTIES**

18 8. IBT lacks knowledge or information sufficient to form a belief as to
19 the truth of the allegations of paragraph 8.

20 9. IBT lacks knowledge or information sufficient to form a belief as to
21 the truth of the allegations of paragraph 9.

22 10. IBT lacks knowledge or information sufficient to form a belief as to
23 the truth of the allegations of paragraph 10.

24 11. IBT lacks knowledge or information sufficient to form a belief as to
25 the truth of the allegations of paragraph 11.

26 12. IBT lacks knowledge or information sufficient to form a belief as to
27 the truth of the allegations of paragraph 12.

28

1 13. IBT lacks knowledge or information sufficient to form a belief as to
2 the truth of the allegations of paragraph 13.

3 14. IBT admits the allegations of the first sentence of paragraph 14. IBT
4 admits that it served as escrow agent pursuant to a certain Escrow Agreement dated
5 June 2, 2006 and that certain of the assets deposited with IBT pursuant to this
6 Escrow Agreement remain in its custody. IBT lacks knowledge or information
7 sufficient to form a belief as to why Innofone named it as a party to this action.

8 **VENUE**

9 15. No answer is required to paragraph 15, which purports merely to state
10 conclusions of law.

11 16. No answer is required to paragraph 16, which purports merely to state
12 conclusions of law.

13 17. No answer is required to paragraph 17, which purports merely to state
14 conclusions of law.

15 **BACKGROUND TO THE ACTION**

16 18. IBT lacks knowledge or information sufficient to form a belief as to
17 the truth of the allegations of paragraph 18.

18 19. IBT lacks knowledge or information sufficient to form a belief as to
19 the truth of the allegations of paragraph 19.

20 20. IBT lacks knowledge or information sufficient to form a belief as to
21 the truth of the allegations of paragraph 20.

22 21. IBT lacks knowledge or information sufficient to form a belief as to
23 the truth of the allegations of paragraph 21.

24 22. IBT lacks knowledge or information sufficient to form a belief as to
25 the truth of the allegations of paragraph 22.

26 23. IBT lacks knowledge or information sufficient to form a belief as to
27 the truth of the allegations of paragraph 23.

28

1 24. IBT lacks knowledge or information sufficient to form a belief as to
2 the truth of the allegations of paragraph 24.

3 25. IBT lacks knowledge or information sufficient to form a belief as to
4 the truth of the allegations of paragraph 25.

5 26. IBT lacks knowledge or information sufficient to form a belief as to
6 the truth of the allegations of paragraph 26.

7 27. IBT lacks knowledge or information sufficient to form a belief as to
8 the truth of the allegations of paragraph 27.

9 28. IBT lacks knowledge or information sufficient to form a belief as to
10 the truth of the allegations of paragraph 28.

11 29. IBT lacks knowledge or information sufficient to form a belief as to
12 the truth of the allegations of paragraph 29.

13 30. IBT lacks knowledge or information sufficient to form a belief as to
14 the truth of the allegations of paragraph 30.

15 31. IBT lacks knowledge or information sufficient to form a belief as to
16 the truth of the allegations of paragraph 31.

17 32. IBT lacks knowledge or information sufficient to form a belief as to
18 the truth of the allegations of paragraph 32.

19 33. IBT lacks knowledge or information sufficient to form a belief as to
20 the truth of the allegations of paragraph 33.

21 **THE TRANSACTION**

22 34. No answer is required to paragraph 34 because the terms of the
23 Securities Purchase Agreement speak for themselves.

24 35. No answer is required to paragraph 35 because the terms of the
25 Securities Purchase Agreement speak for themselves.

26 36. IBT lacks knowledge or information sufficient to form a belief as to
27 the truth of the allegations of the first sentence of paragraph 36. No answer is
28 required to the remaining allegations of paragraph 36 because the terms of the

1 Securities Purchase Agreement and Certificate of Designation speak for
2 themselves.

3 37. IBT lacks knowledge or information sufficient to form a belief as to
4 the truth of the allegations of the first sentence of paragraph 37. No answer is
5 required to the balance of paragraph 37 because the contents of the Registration
6 Rights Agreement speak for themselves.

7 38. IBT admits the allegations of the first four sentences of paragraph 38.
8 IBT lacks knowledge or information sufficient to form a belief as to the truth of the
9 remaining allegations of paragraph 38.

10 39. IBT admits the allegations of the first two sentences of paragraph 39.
11 IBT lacks knowledge or information sufficient to form a belief as to the truth of the
12 remaining allegations of paragraph 39.

13 40. No answer is required to paragraph 40 as the terms of the equity swap
14 documents speak for themselves.

15 41. No answer is required to paragraph 41 as the terms of the equity swap
16 documents speak for themselves.

17 42. IBT lacks knowledge or information sufficient to form a belief as to
18 the truth of the allegations of paragraph 42.

19 43. IBT lacks knowledge or information sufficient to form a belief as to
20 the truth of the allegations of paragraph 43.

21 44. IBT lacks knowledge or information sufficient to form a belief as to
22 the truth of the allegations of paragraph 44.

23 45. IBT lacks knowledge or information sufficient to form a belief as to
24 the truth of the allegations of paragraph 45.

25 46. IBT lacks knowledge or information sufficient to form a belief as to
26 the truth of the allegations of paragraph 46.

27 47. IBT lacks knowledge or information sufficient to form a belief as to
28 the truth of the allegations of paragraph 47.

1 48. IBT lacks knowledge or information sufficient to form a belief as to
2 the truth of the allegations of paragraph 48.

3 **FIRST CLAIM FOR RELIEF**

4 **(Violation of Section 10(b) of the Securities Exchange Act and Securities and**
5 **Exchange Commission rule 10b-5 Promulgated Thereunder Against Cogent**
6 **Capital Financial, LLC, Cogent Capital Investments, LLC, Cogent Capital**
7 **Group, LLC, Kofford, and Holden)**

8 49. IBT repeats and incorporates by reference its responses to paragraphs
9 1 through 48.

10 50-55. No answer is required to paragraph 50-55 because Count I
11 asserts no claim against IBT. To the extent an answer is required, IBT lacks
12 knowledge or information sufficient to for a belief as to the truth of the allegations
13 of paragraph 50-55.

14 **SECOND CLAIM FOR RELIEF**

15 **(Rescission of Swap Agreement Documents Based on Illegality Against Cogent**
16 **Capital Financial, LLC, Cogent Capital Investments, LLC, Cogent Capital**
17 **Group, LLC, Kofford, Holden, and Investors Bank & Trust Company)**

18 56. IBT repeats and incorporates by reference its responses to paragraphs
19 1 through 48.

20 57. IBT lacks knowledge or information sufficient to form a belief as to
21 the truth of the allegations of paragraph 57.

22 58. IBT lacks knowledge or information sufficient to form a belief as to
23 the truth of the allegations of paragraph 58.

24 59. IBT lacks knowledge or information sufficient to form a belief as to
25 the truth of the allegations of paragraph 59.

26 60. IBT lacks knowledge or information sufficient to form a belief as to
27 the truth of the allegations of paragraph 60.

28

1 61. No answer is required to paragraph 61 as it purports merely to describe
2 relief requested by Innofone. To the extent an answer is required, IBT denies the
3 allegations of paragraph 61.

4 62. IBT lacks knowledge or information sufficient to form a belief as to
5 the truth of the allegations of paragraph 62.

6 **THIRD CLAIM FOR RELIEF**

7 **(Rescission of Swap Agreements Based on Fraud or Mistake Against Cogent**
8 **Capital Financial, LLC, Cogent Capital Investments, LLC, Cogent Capital**
9 **Group, LLC, Kofford, Holden, and Investors Bank & Trust Company)**

10 63. IBT repeats and incorporates by reference its responses to paragraph 1
11 through 48 and 56-62.

12 64. IBT lacks knowledge or information sufficient to form a belief as to
13 the truth of the allegations of paragraph 64.

14 65. IBT lacks knowledge or information sufficient to form a belief as to
15 the truth of the allegations of paragraph 65.

16 66. IBT lacks knowledge or information sufficient to form a belief as to
17 the truth of the allegations of paragraph 66.

18 67. IBT lacks knowledge or information sufficient to form a belief as to
19 the truth of the allegations of paragraph 67.

20 68. IBT lacks knowledge or information sufficient to form a belief as to
21 the truth of the allegations of paragraph 68.

22 69. No answer is required to paragraph 69 as it purports merely to describe
23 relief requested by Innofone. To the extent an answer is required, IBT denies the
24 allegations of paragraph 69.

25 70. IBT lacks knowledge or information sufficient to form a belief as to
26 the truth of the allegations of paragraph 70.

FOURTH CLAIM FOR RELIEF

(Negligent Misrepresentation Against Cogent Capital Financial, LLC, Cogent Capital Investments, LLC, Cogent Capital Group, LLC, Kofford, and Holden)

71. IBT repeats and incorporates by reference its responses to paragraphs 1-48 and 56-70.

72-77. No answer is required to paragraphs 72-77 because Count IV asserts no claim against IBT. To the extent an answer is required, IBT lacks knowledge or information sufficient to for a belief as to the truth of the allegations of paragraph 72-77.

FIFTH CLAIM FOR RELIEF

(Declaratory Relief Pursuant to 28 U.S.C. § 2201 Against Cogent Capital Financial, LLC, Cogent Capital Investments, LLC, and Cogent Capital Group, LLC)

78. IBT repeats and incorporates by reference its responses to paragraphs 1-48 and 56-77.

79-84. No answer is required to paragraphs 79-84 because Count V asserts no claim against IBT. To the extent an answer is required, IBT lacks knowledge or information sufficient to for a belief as to the truth of the allegations of paragraph 79-84.

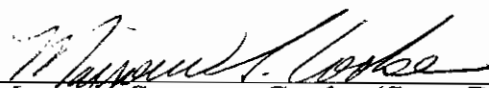
WHEREFORE, IBT requests that this Court:

1. Dismiss the Complaint against it with prejudice;
2. Award it the costs and reasonable attorneys' fees it has incurred in defending this action;

1 3. Award it such other and further relief as may be just and
2 appropriate.

3 Dated: April 30, 2007

COOKE CLANCY & GRUENTHAL
LLP

5
6 By: 
7 Marjorie Sommer Cooke (State Bar
8 No. 161694)

265 Franklin Street
Boston, Massachusetts 02110
Telephone: (617) 428-6800
Facsimile: (617) 428-6868

Attorneys for Defendant
INVESTORS BANK & TRUST
COMPANY

PROOF OF SERVICE

I declare that I am a partner in the law firm of Cooke Clancy & Gruenthal LLP, whose address is 265 Franklin Street, Boston, MA 02110. I am not a party to the within case, and I am over eighteen years of age.

I further declare that on April 30, 2007, I served a copy of the Answer of Defendant Investors Bank & Trust Company by first-class mail, postage prepaid, and by electronic mail, upon the following counsel of record, at the mailing addresses and email addresses set forth below:

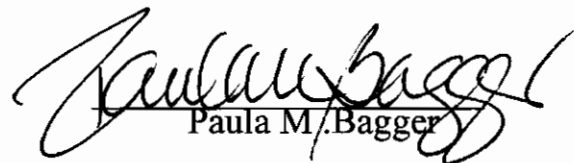
Gidon Caine, Esq.
gcaine@jonesday.com
Roderick A. McLeod, Esq.
rmcleod@jonesday.com
Jones Day
1755 Embarcadero Road
Palo Alto, CA 94303
Phone: 650-739-3963
Fax: 650-739-3900

Mark R. McDonald, Esq.
MMcDonald@mofo.com
Selia M. Acevedo, Esq.
SeliaAcevedo@mofo.com
Morrison & Foerster, LLP
555 West Fifth Street
Los Angeles, CA 90013-1024
Phone: 213-892-5200
Fax: 213-892-5454

Joel C. Haims, Esq.
JHaims@mofo.com
Morrison & Foerster, LLP
1290 Avenue of the Americas
New York, NY 10104-0185
Phone: 212-468-8000
Fax: 212-468-7900

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Boston, Massachusetts on April 30, 2007.



Paula M. Bagger